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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. *2013-987*

11 **JOSEPH MICHAEL BERDEN II**
12 **904 Meadowlark Lane**
13 **Sunnyvale, CA 94087**

A C C U S A T I O N

14 **Registered Nurse License No. 708902**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs.

21 2. On or about July 30, 2007, the Board of Registered Nursing issued Registered Nurse
22 License Number 708902 to Joseph Michael Berden II (Respondent). The Registered Nurse
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on January 31, 2015, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1 4. Section **2750** of the Business and Professions Code (Code) provides, in pertinent part,
2 that the Board may discipline any licensee, including a licensee holding a temporary or an
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
4 Nursing Practice Act.

5 5. Section **2764** of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license.

8 **STATUTORY PROVISIONS**

9 6. Section **2761** of the Code states, in pertinent part:

10 The board may take disciplinary action against a certified or licensed nurse or deny an
11 application for a certificate or license for any of the following:

12 (a) Unprofessional conduct

13 . . .

14 7. Section **2762** of the Code states, in pertinent part:

15 In addition to other acts constituting unprofessional conduct within the meaning of this
16 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the
17 following:

18 . . .

19 (b) Use any controlled substance as defined in Division 10 (commencing with Section
20 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
21 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
22 himself or herself, any other person, or the public or to the extent that such use impairs his or her
23 ability to conduct with safety to the public the practice authorized by his or her license.

24 . . .

25 **COST RECOVERY**

26 8. Section **125.3** of the Code provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licensee found to have committed a violation or violations of
28 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case.

2 **FIRST CAUSE FOR DISCIPLINE**

3 (Unprofessional Conduct)

4 9. Respondent is subject to disciplinary action under section 2761(a) of the Code in that
5 he acted unprofessionally. The circumstances are as follows:

6 10. On or about May 25, 2012, in Mountain View, California, Respondent was
7 discovered sleeping in a puddle in a parking lot. A police officer woke Respondent up and, upon
8 investigation, determined that Respondent was so impaired by alcohol that he was unable to care
9 for himself. Respondent was arrested for violation of California Penal Code section 647(f)
10 (public intoxication).

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Dangerous Use of Alcohol)

13 11. Respondent is subject to disciplinary action under sections 2761(a) and 2762(b) of the
14 Code in that he used alcohol to an extent and in a manner dangerous or injurious to himself, any
15 other person, or the public, or to the extent that such use impaired his ability to conduct with
16 safety to the public the practice of nursing, as set forth above in paragraph 10.

17 **DISCIPLINE CONSIDERATIONS**

18 12. To determine the degree of discipline, if any, to be imposed on Respondent,
19 Complainant alleges that on or about July 8, 2002, in a prior criminal proceeding entitled *People*
20 *of the State of Michigan v. Joseph Michael Berden II*, in Michigan First Judicial District case
21 number 02-0414-SD-2, Respondent was convicted of having violated Michigan Vehicle Code
22 section 257.625 (operating a motor vehicle while intoxicated).

23 13. On or about March 12, 2007, Respondent stated in a letter to the Board that, as a
24 result of his 2002 conviction, he never drank alcohol again.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 708902, issued to Joseph
5 Michael Berden II;

6 2. Ordering Joseph Michael Berden II to pay the Board of Registered Nursing the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: April 29, 2013

11 *for* Stacie Ben
12 LOUISE R. BAILEY, M.ED., RN
13 Executive Officer
14 Board of Registered Nursing
15 Department of Consumer Affairs
16 State of California
17 Complainant
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